

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

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**In the Matter of**

**CERTAIN UNIVERSAL TRANSMITTERS  
FOR GARAGE DOOR OPENERS**

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) **Inv. No. 337-TA-497**  
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**NOTICE OF COMMISSION DETERMINATIONS**

**(1) NOT TO REVIEW ONE INITIAL DETERMINATION TERMINATING THE  
INVESTIGATION AS TO THE PATENT CLAIMS AND (2) TO REVIEW AND AFFIRM  
A SECOND INITIAL DETERMINATION TERMINATING THE INVESTIGATION;  
TERMINATION OF THE INVESTIGATION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (Order No. 13) terminating the investigation as to the patent claims therein. The Commission has also determined to review and affirm the presiding administrative law judge's initial determination (Order No. 14) to terminate the investigation. The investigation is therefore terminated in its entirety.

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090. Copies of the Commission's order, the public version of the administrative law judge's (ALJ's) initial determinations, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on August 26,

2003, based on a complaint filed by The Chamberlain Group, Inc. (“Chamberlain”) of Elmhurst, Illinois. 68 FR 51301 (August 26, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1-8 of U.S. Patent No. RE 35,364 and claims 5-62 of U.S. Patent No. RE 37,986, and violation of section 1201(a)(2) of the Digital Millennium Copyright Act (“DMCA”), 17 USC 1201(a)(2). The respondents named in the complaint and the Commission’s notice of investigation are Skylink Technologies, Inc.; Capital Prospect, Ltd.; and Philip Tsui (collectively, “respondents”).

At the same time that the Commission instituted the investigation, it provisionally accepted Chamberlain’s motion for temporary relief which accompanied the complaint and was based on the allegation that there was reason to believe that respondents were in violation of section 337. Chamberlain’s motion for temporary relief was based solely on respondents’ alleged violation of section 1201(a)(2) of the DMCA.

On November 4, 2004, the ALJ issued his initial determination on temporary relief, finding that (1) the Commission has subject matter jurisdiction over Chamberlain’s DMCA claim, and (2) Chamberlain’s allegation that respondents violate the DMCA had not been supported as a matter of law. He therefore concluded that there was no basis to issue temporary relief.

On November 24, 2003, the Commission issued a notice and order affirming the ALJ’s initial determination on temporary relief. Specifically, the Commission affirmed the ALJ’s conclusion that the Commission possesses subject matter jurisdiction under section 337 over Chamberlain’s allegation of violation of section 1201(a)(2) of the DMCA. The Commission also affirmed the ALJ’s conclusion that Chamberlain’s allegation that respondents violate section 1201(a)(2) of the DMCA is not supported, *i.e.*, that there is no reason to believe a violation of section 337 exists with respect to Chamberlain’s DMCA claim because it is unlikely that Chamberlain will succeed on the merits of that claim. In its November 24, 2003, order, the Commission noted that complainant and respondent Skylink are engaged in parallel litigation in the United States District Court for the Northern District of Illinois, *The Chamberlain Group, Inc. v. Skylink Technologies, Inc.*, Civ. No. 02 C 6376. The Commission further noted that it had been advised by respondents and the Commission investigative attorney that the District Court had, on summary judgment, ruled adversely to Chamberlain on the identical DMCA claim it raises here, that respondents had stated that they expected that ruling to be entered as a final judgment shortly, and that when it is Chamberlain’s DMCA claim here will be barred by *res judicata*. The Commission advised that, should the proceedings in the District Court give rise to *res judicata*, the parties should raise that issue with the Commission promptly. The District Court has entered its ruling as a judgment, which is currently the subject of an appeal to the U.S. Court of Appeals for the Federal Circuit.

On December 16, 2003, Chamberlain moved to terminate the investigation in part based on the

withdrawal of those portions of its complaint alleging infringement of U.S. Patent No. Re. 35,364 and U.S. Patent No. Re. 37,986. On January 14, 2004, the ALJ issued an initial determination (Order No. 13) granting Chamberlain's motion. No party petitioned for review of Order No. 13.

On December 19, 2003, respondents moved to terminate this investigation pursuant to Commission rule 210.21 as to Chamberlain's claim of violation of the DMCA, or alternatively to grant summary determination in respondents' favor on Chamberlain's DMCA claim by reason of *res judicata* and collateral estoppel based on the District Court's judgment. Also on December 19, 2003, respondents moved to terminate the entire investigation pursuant to Commission rule 210.21 on the basis of Chamberlain's stipulation and agreement that the investigation would be terminated if respondents prevailed on their then-pending motion for summary determination regarding Chamberlain's DMCA claim.

On January 14, 2004, the ALJ issued an initial determination, Order No. 14, granting respondents' motions to terminate the investigation in its entirety based on *res judicata* and finding moot respondents' motion based on the Chamberlain stipulation and agreement. Chamberlain petitioned for review of Order No. 14. Respondents and the Commission investigative attorney filed oppositions to that petition.

Having examined the relevant portions of the record in this investigation, including Orders Nos. 13 and 14, Chamberlain's petition for review of Order No. 14, and the oppositions of the respondents and the Commission investigative attorney to that petition, the Commission determined (1) to not review Order No. 13 and (2) to review Order No. 14, and further determined that Chamberlain's DMCA claim is barred under the doctrine of claim preclusion as a result of the District Court judgment. The Commission's determinations disposed of all the unfair practices alleged in this investigation, resulting in the termination of the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 USC 1337), and in sections 210.43-.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.43-.45).

By order of the Commission.

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Marilyn R. Abbott  
Secretary

Issued: February 17, 2004